



General Assembly

January Session, 2013

Governor's Bill No. 6356

LCO No. 3034



Referred to Committee on COMMERCE

Introduced by:

REP. SHARKEY, 88th Dist.
REP. ARESIMOWICZ, 30th Dist.
SEN. WILLIAMS, 29th Dist.
SEN. LOONEY, 11th Dist.

***AN ACT CONCERNING BENEFIT CORPORATIONS AND
ENCOURAGING SOCIAL ENTERPRISE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2013*) As used in section 33-856
2 of the general statutes, as amended by this act, this section and sections
3 2 to 12, inclusive, of this act:

4 (1) "Benefit corporation" means a business corporation (A) that has
5 elected to become subject to the provisions of section 33-856 of the
6 general statutes, as amended by this act, this section and sections 2 to
7 12, inclusive, of this act, and (B) whose status as a benefit corporation
8 has not been terminated pursuant to section 6 of this act.

9 (2) "Benefit director" means either (A) the director designated as the
10 benefit director of a benefit corporation pursuant to section 8 of this
11 act, or (B) a person with one or more of the powers, duties or rights of

12 a benefit director as provided in a benefit corporation shareholder
13 agreement that eliminates the board of directors or transfers to one or
14 more shareholders or other persons all or part of the authority to
15 exercise corporate powers or to manage the business and affairs of the
16 corporation.

17 (3) "Benefit enforcement proceeding" means any claim or action for
18 (A) the failure of a benefit corporation to pursue or create a general
19 public benefit or any specific public benefit set forth in its certificate of
20 incorporation, bylaws or otherwise adopted by its board of directors,
21 or (B) the violation of any obligation, duty or standard of conduct
22 under section 33-856 of the general statutes, as amended by this act,
23 this section and sections 2 to 12, inclusive, of this act.

24 (4) "Benefit officer" means the individual designated as the benefit
25 officer of a benefit corporation pursuant to section 10 of this act.

26 (5) "Business corporation" means a corporation whose internal
27 affairs are governed by chapter 601 of the general statutes.

28 (6) "Charitable organization" means any nonprofit organization
29 organized for charitable purposes to which has been issued a ruling by
30 the Internal Revenue Service classifying it as an exempt organization
31 under Section 501(c)(3) of the Internal Revenue Code of 1986, or any
32 subsequent corresponding internal revenue code of the United States,
33 as amended from time to time.

34 (7) "General public benefit" means a material positive impact on
35 society and the environment, taken as a whole and assessed against a
36 third-party standard, from the business and operations of a benefit
37 corporation.

38 (8) "Legacy preservation provision" means a provision providing
39 that a benefit corporation (1) shall, upon dissolution, distribute its
40 assets to one or more charitable organizations or benefit corporations
41 that have enacted such provision, and (2) may not otherwise terminate

42 its status as a benefit corporation.

43 (9) "Minimum status vote" means, in addition to any other required
44 approval or vote, a vote in which (A) the shareholders of every class or
45 series shall be entitled to vote on the corporate action regardless of a
46 limitation stated in the certificate of incorporation or bylaws on the
47 voting rights of any class or series, and (B) the corporate action is
48 approved by the affirmative vote of at least two-thirds of the voting
49 power of each voting group entitled to vote thereon.

50 (10) "Specific public benefit" means a benefit that serves one or more
51 public welfare, religious, charitable, scientific, literary or educational
52 purposes, or other purpose or benefit beyond the strict interest of the
53 shareholders of the benefit corporation, and includes: (A) Providing
54 low-income or underserved individuals or communities with
55 beneficial products or services, (B) promoting economic opportunity
56 for individuals or communities beyond the creation of jobs in the
57 normal course of business, (C) preserving or improving the
58 environment, (D) improving human health, (E) promoting the arts,
59 sciences or advancement of knowledge, (F) increasing the flow of
60 capital to entities with a public benefit purpose, and (G) conferring any
61 other particular benefit on society or the environment.

62 (11) "Subsidiary" means, in relation to an individual, an entity in
63 which the individual either (A) owns directly or indirectly equity
64 interests entitled to cast a majority of the votes entitled to be cast
65 generally in an election of directors or members of the governing body
66 of the entity, or (B) otherwise owns or controls voting or contractual
67 power to exercise effective governing control of the entity. The
68 percentage of ownership of equity interests or ownership or control of
69 power to exercise control shall be calculated as if all outstanding rights
70 to acquire equity interests in the entity had been exercised.

71 (12) "Third-party standard" means a recognized standard for
72 defining, reporting and assessing corporate social and environmental

73 performance that is (A) developed by an organization that is
74 independent of the benefit corporation, and (B) easily understood
75 because the following information concerning the standard is publicly
76 available: (i) The factors considered when measuring the performance
77 of a business, (ii) the relative weightings of those factors, and (iii) the
78 identity of the persons that develop and control changes to the
79 standard and the process by which those changes are made.

80 (13) "Unanimous vote" means, in addition to any other required
81 approval or vote, a vote in which (A) the shareholders of every class or
82 series shall be entitled to vote on the corporate action regardless of a
83 limitation stated in the certificate of incorporation or bylaws on the
84 voting rights of any class or series, and (B) the corporate action is
85 approved by the affirmative vote of the entire voting power of each
86 voting group entitled to vote thereon.

87 (14) "Voting group" means all shares of one or more classes or series
88 that under the certificate of incorporation, sections 33-600 to 33-998,
89 inclusive, of the general statutes or this section and sections 2 to 12,
90 inclusive, of this act are entitled to vote and be counted together
91 collectively on a matter at a meeting of shareholders. All shares
92 entitled by the certificate of incorporation or said sections to vote
93 generally on the matter are for that purpose a single voting group.

94 (15) "Voting power" means the current power to vote on a matter at
95 a meeting of shareholders.

96 Sec. 2. (NEW) (*Effective October 1, 2013*) (a) Section 33-856 of the
97 general statutes, as amended by this act, and sections 1 to 12, inclusive,
98 of this act shall be applicable to all benefit corporations.

99 (b) The existence of a provision of section 33-856 of the general
100 statutes, as amended by this act, and sections 1 to 12, inclusive, of this
101 act shall not of itself create an implication that a contrary or different
102 rule of law is applicable to a business corporation that is not a benefit
103 corporation. The provisions of section 33-856 of the general statutes, as

104 amended by this act, and sections 1 to 12, inclusive, of this act shall not
105 affect a statute or rule of law that is applicable to a business
106 corporation that is not a benefit corporation.

107 (c) Except as otherwise provided in section 33-856 of the general
108 statutes, as amended by this act, and sections 1 to 12, inclusive, of this
109 act, the provisions of chapter 601 of the general statutes shall be
110 generally applicable to all benefit corporations. The specific provisions
111 of sections 1 to 12, inclusive, of this act shall control over the general
112 provisions of chapter 601 of the general statutes.

113 (d) A provision of the certificate of incorporation or bylaws of a
114 benefit corporation may not limit, be inconsistent with, or supersede a
115 provision of section 33-856 of the general statutes, as amended by this
116 act, and sections 1 to 12, inclusive, of this act.

117 (e) Nothing in section 33-856 of the general statutes, as amended by
118 this act, and sections 1 to 12, inclusive, of this act shall (1) be construed
119 as creating or granting to any person any contractual right to, or
120 proprietary interest in, the income or assets of the benefit corporation
121 by virtue of the fact that he or she may directly or indirectly benefit
122 from the general or any specific public benefit of the benefit
123 corporation, (2) be construed as imposing or creating a charitable use,
124 interest or restriction on any property or assets of a benefit
125 corporation, or (3) deprive the Attorney General of jurisdiction over a
126 benefit corporation under any other applicable law.

127 Sec. 3. (NEW) (*Effective October 1, 2013*) (a) A benefit corporation
128 shall be formed in accordance with the provisions of chapter 601 of the
129 general statutes and its certificate of incorporation, as initially filed
130 with the office of the Secretary of the State or as amended, shall state
131 that such corporation is a benefit corporation.

132 (b) In addition to its purpose under chapter 601 of the general
133 statutes, a benefit corporation shall have a purpose of creating a
134 general public benefit. Such purpose shall be set forth in the

135 corporation's certificate of incorporation.

136 (c) The certificate of incorporation of a benefit corporation may
137 identify one or more specific public benefits that are the purpose of the
138 benefit corporation to create in addition to its purposes under chapter
139 601 of the general statutes or subsection (b) of this section. The
140 identification of a specific public benefit under this subsection shall not
141 limit the obligation of a benefit corporation to pursue a general public
142 benefit established pursuant to subsection (a) of this section or its
143 purpose under chapter 601 of the general statutes.

144 (d) The creation of a general public benefit and one or more specific
145 public benefits, if any, pursuant to this section is in the best interests of
146 the benefit corporation.

147 (e) A benefit corporation may amend its certificate of incorporation
148 to add, amend or delete the identification of a specific public benefit
149 that is the purpose of the benefit corporation to create. Any such
150 amendment shall be adopted in accordance with the procedures set
151 forth in section 33-797 of the general statutes and shall be approved by
152 a minimum status vote.

153 Sec. 4. (NEW) (*Effective October 1, 2013*) (a) A business corporation
154 that was not formed as a benefit corporation may become a benefit
155 corporation by amending its certificate of incorporation so that such
156 certificate contains, in addition to matters required by section 33-636 of
157 the general statutes, (1) a statement that the corporation is a benefit
158 corporation, and (2) a purpose of creating a general public benefit. Any
159 such amendment shall be adopted in accordance with the procedures
160 set forth in section 33-797 of the general statutes and shall be approved
161 by a minimum status vote.

162 (b) Any corporation that is not a benefit corporation that is a party
163 to a merger or consolidation in which the survivor or consolidated
164 corporation will be a benefit corporation shall approve the plan of
165 merger or consolidation by a minimum status vote in addition to any

166 other vote required by sections 33-814 to 33-821a, inclusive, of the
167 general statutes, the certificate of incorporation or the bylaws.

168 (c) Any corporation that is not a benefit corporation that is a party to
169 a merger or consolidation in which shares of stock of such corporation
170 will be converted into a right to receive shares of stock of a benefit
171 corporation shall approve the plan of merger or consolidation by a
172 minimum status vote in addition to any other vote required by
173 sections 33-840 to 33-845, inclusive, of the general statutes, the
174 certificate of incorporation or the bylaws.

175 Sec. 5. (NEW) (*Effective October 1, 2013*) (a) A benefit corporation
176 may, after not less than twenty-four months from the date it filed its
177 certificate of incorporation with the Secretary of the State, enact a
178 legacy preservation provision by amending its certificate of
179 incorporation so that such certificate contains a statement that the
180 corporation is subject to a legacy preservation provision. Any such
181 amendment shall be adopted in accordance with the procedures set
182 forth in section 33-797 of the general statutes and shall be approved by
183 (1) a unanimous vote, or (2) written consent of the shareholders of
184 every class or series regardless of a limitation stated in the certificate of
185 incorporation or bylaws on the voting rights of any class or series.

186 (b) Notwithstanding the provisions of sections 33-880 to 33-900,
187 inclusive, of the general statutes, the assets of a benefit corporation that
188 dissolves pursuant to chapter 601 of the general statutes and has
189 enacted a legacy preservation provision shall be applied and
190 distributed as follows: (1) All liabilities and other obligations of the
191 benefit corporation shall be paid, satisfied and discharged, or adequate
192 provision shall be made therefore, and (2) all remaining assets received
193 and held by the benefit corporation shall be transferred or conveyed to
194 one or more charitable organizations or benefit corporations that have
195 enacted a legacy preservation provision pursuant to this section.

196 Sec. 6. (NEW) (*Effective October 1, 2013*) (a) Except for a benefit

197 corporation that has enacted a legacy preservation provision pursuant
198 to section 5 of this act, a benefit corporation may terminate its status as
199 such and cease to be subject to the provisions of sections 1 to 13,
200 inclusive, of this act by amending its certificate of incorporation to
201 delete any provision stating that such corporation is a benefit
202 corporation. Any such amendment shall be adopted in accordance
203 with the procedures set forth in section 33-797 of the general statutes
204 and shall be approved by a minimum status vote.

205 (b) Except for a benefit corporation that has enacted a legacy
206 preservation provision pursuant to section 5 of this act, a benefit
207 corporation may be a party to a merger or consolidation in which the
208 survivor of the merger will not be a benefit corporation, provided the
209 plan of merger or consolidation shall not be effective unless such plan
210 is adopted by a minimum status vote in addition to any other vote
211 required by sections 33-814 to 33-821a, inclusive, of the general
212 statutes, the certificate of incorporation or the bylaws.

213 (c) Except for a benefit corporation that has enacted a legacy
214 preservation provision pursuant to section 5 of this act, a benefit
215 corporation may be a party to a merger or consolidation in which
216 shares of stock of such benefit corporation will be converted into a
217 right to receive shares of stock of a corporation that is not a benefit
218 corporation, provided such plan of merger or consolidation shall not
219 be effective unless such plan is adopted by a minimum status vote in
220 addition to any other vote required by sections 33-840 to 33-845,
221 inclusive, of the general statutes, the certificate of incorporation or the
222 bylaws.

223 (d) (1) Except for a benefit corporation that has enacted a legacy
224 preservation provision in accordance with section 5 of this act, a sale,
225 lease, exchange or other disposition of all, or substantially all, of the
226 assets of a benefit corporation, unless such disposition is in the usual
227 and regular course of business of the benefit corporation, shall not be
228 effective unless such disposition is approved by a minimum status

229 vote in addition to any other vote required by section 33-831 of the
230 general statutes, the certificate of incorporation or the bylaws; and (2) a
231 benefit corporation that has enacted a legacy preservation provision
232 shall not enter into a sale, lease, exchange or other disposition of all, or
233 substantially all, of the assets of a benefit corporation, unless such
234 disposition is in the usual and regular course of business of the benefit
235 corporation, the parties to the disposition are charitable organizations
236 or benefit corporations that have enacted legacy preservation
237 provisions pursuant to section 5 of this act, and such disposition is
238 approved by a minimum status vote in addition to any other vote
239 required by section 33-831 of the general statutes, the certificate of
240 incorporation or the bylaws.

241 Sec. 7. (NEW) (*Effective October 1, 2013*) (a) The board of directors,
242 committees of the board and individual directors of a benefit
243 corporation when discharging the duties of their respective positions
244 and considering the best interests of the benefit corporation:

245 (1) Shall consider the effects of any corporate action upon:

246 (A) The shareholders of the benefit corporation,

247 (B) The employees and workforce of the benefit corporation, and its
248 subsidiaries and suppliers,

249 (C) The interests of customers as beneficiaries of the general public
250 benefit purpose or any specific public benefit purpose of the benefit
251 corporation,

252 (D) Community and societal factors, including those of each
253 community in which offices or facilities of the benefit corporation, or
254 its subsidiaries or suppliers are located,

255 (E) The local and global environment,

256 (F) The short-term and long-term interests of the benefit
257 corporation, including benefits that may accrue to the benefit

258 corporation from its long-term plans and the possibility that these
259 interests and the general public benefit purpose and any specific public
260 benefit purposes of the benefit corporation may be best served by the
261 continued independence of the benefit corporation, and

262 (G) The ability of the benefit corporation to accomplish its general
263 public benefit and any specific public benefit;

264 (2) May consider (A) the resources, intent, and past, stated and
265 potential conduct of any person seeking to acquire control of the
266 benefit corporation, and (B) other pertinent factors or the interests of
267 any other person that they deem appropriate; and

268 (3) Need not give priority to the interests of a particular person
269 referred to in subdivision (1) or (2) of this subsection over the interests
270 of any other person unless the benefit corporation has stated its
271 intention to give priority to interests related to a specific public benefit
272 purpose identified in its certification of incorporation.

273 (b) The consideration of interests and factors in the manner required
274 by subsection (a) of this section (1) shall not constitute a violation of
275 section 33-756 of the general statutes, and (2) is in addition to the
276 power of directors to consider the interests and factors referred to in
277 subsection (d) of section 33-756 of the general statutes.

278 (c) In any proceeding brought by or in the right of a benefit
279 corporation or brought by or on behalf of the shareholders of a benefit
280 corporation, a director is not personally liable for monetary damages
281 for (1) any action taken as a director if the director performed the
282 duties of office in compliance with section 33-756 of the general
283 statutes and this section, or (2) the failure of the benefit corporation to
284 create a general public benefit or any specific public benefit specified
285 in its certificate of incorporation, bylaws or otherwise adopted by the
286 board of directors.

287 (d) A director shall not have a duty to a person that is a beneficiary

288 of the general public benefit purpose or any specific public benefit
289 purpose of a benefit corporation arising from the status of the person
290 as a beneficiary.

291 Sec. 8. (NEW) (*Effective October 1, 2013*) (a) The board of directors of
292 a benefit corporation that is a publicly traded corporation shall, and
293 the board of any other benefit corporation may, include a director who
294 shall (1) be designated the benefit director, and (2) have, in addition to
295 the powers, duties, rights and immunities of the other directors of the
296 benefit corporation, any additional powers, duties, rights and
297 immunities provided (A) by the bylaws, or (B) absent controlling
298 provisions in the bylaws, by resolutions or orders of the board of
299 directors.

300 (b) The benefit director shall be elected, and may be removed, in the
301 manner provided under chapter 601 of the general statutes. The benefit
302 director shall not have a material relationship with the benefit
303 corporation or a subsidiary of the benefit corporation. A material
304 relationship between a person and a benefit corporation or any of its
305 subsidiaries shall be conclusively presumed to exist if any of the
306 following apply: (1) A person is, or has been within the last three years,
307 an employee of the benefit corporation or a subsidiary of the benefit
308 corporation; (2) an immediate family member of a person is, or has
309 been within the last three years, an executive officer of the benefit
310 corporation or a subsidiary of the benefit corporation; or (3) there is
311 beneficial or record ownership of five per cent or more of the
312 outstanding shares of the benefit corporation by (A) the person, or (B)
313 an entity (i) of which the person is a director, an officer or a manager,
314 or (ii) in which the person owns beneficially or of record five per cent
315 or more of the outstanding equity interests, which percentage shall be
316 calculated as if all outstanding rights to acquire equity interests in the
317 entity had been exercised. Currently or previously serving as a benefit
318 director or benefit officer for the benefit corporation or a subsidiary of
319 the benefit corporation shall not constitute a material relationship. The
320 benefit director may serve as the benefit officer at the same time as

321 serving as the benefit director. The certificate of incorporation, bylaws
322 or a shareholder agreement of a benefit corporation may prescribe
323 additional qualifications of the benefit director not inconsistent with
324 this subsection.

325 (c) The benefit director shall prepare, and the benefit corporation
326 shall include in the annual benefit report required by section 12 of this
327 act, the opinion of the benefit director regarding (1) whether the
328 benefit corporation acted in accordance with its general public benefit
329 purpose and any specific public benefit purpose in all material respects
330 during the period covered by the report, (2) whether the directors and
331 officers complied with subsection (a) of section 7 of this act and
332 subsection (a) of section 9 of this act, respectively, and (3) if the benefit
333 corporation or its directors or officers failed to comply with subsection
334 (a) of section 7 of this act or subsection (a) of section 9 of this act, a
335 description of the ways in which the benefit corporation or its directors
336 or officers failed to comply. If a benefit corporation does not elect a
337 benefit director, the board of directors shall prepare such opinion
338 pursuant to this subsection. If a shareholder agreement eliminates the
339 board of directors or transfers to one or more shareholders or other
340 persons all or part of the authority to exercise corporate powers or to
341 manage the business and affair of the corporation, such agreement
342 shall designate a person who shall prepare such opinion.

343 (d) The act or omission of an individual in the capacity of a benefit
344 director shall constitute for all purposes an act or omission of that
345 individual in the capacity of a director of the benefit corporation.

346 (e) Regardless of whether the certificate of incorporation of a benefit
347 corporation includes a provision limiting the personal liability of
348 directors as authorized by chapter 601 of the general statutes, a benefit
349 director shall not be personally liable for any act or omission in the
350 capacity of a benefit director unless the act or omission constitutes self-
351 dealing, wilful misconduct or a knowing violation of law.

352 Sec. 9. (NEW) (*Effective October 1, 2013*) (a) Each officer of a benefit
353 corporation shall consider the interests and factors described in
354 subsection (a) of section 7 of this act in the manner provided in that
355 subsection if (1) the officer has discretion to act with respect to a
356 matter, and (2) it reasonably appears to the officer that the matter may
357 have a material effect on the creation by the benefit corporation of a
358 general public benefit or any specific public benefit identified in the
359 certificate of incorporation of the benefit corporation.

360 (b) The consideration of interests and factors in the manner
361 described in subsection (a) shall not constitute a violation of section 33-
362 765 of the general statutes.

363 (c) An officer shall not be personally liable for (1) an act or omission
364 as an officer in the course of performing the duties of an officer under
365 subsection (a) of this section if the officer performed the duties of the
366 position in compliance with section 33-765 of the general statutes and
367 this section, or (2) the failure of the benefit corporation to pursue or
368 create a general public benefit or any specific public benefit.

369 (d) An officer shall not have a duty to a person that is a beneficiary
370 of the general public benefit purpose or any specific public benefit
371 purpose of a benefit corporation arising from the status of the person
372 as a beneficiary.

373 Sec. 10. (NEW) (*Effective October 1, 2013*) A benefit corporation may
374 designate a benefit officer who shall have (1) the powers and duties
375 relating to the purpose of the corporation to create a general public
376 benefit or any specific public benefit provided (A) by the bylaws, or (B)
377 absent controlling provisions in the bylaws, by resolutions or orders of
378 the board of directors; and (2) the duty to prepare the benefit report
379 required by subsection (b) of section 12 of this act.

380 Sec. 11. (NEW) (*Effective October 1, 2013*) (a) Except in a benefit
381 enforcement proceeding, no person may bring an action or assert a
382 claim against a benefit corporation or its directors or officers with

383 respect to (1) the failure to pursue or create a general public benefit or
384 any specific public benefit set forth in its certificate of incorporation, or
385 (2) the violation of an obligation, duty or standard of conduct under
386 section 33-856 of the general statutes, as amended by this act, and
387 sections 1 to 12, inclusive, of this act.

388 (b) A benefit corporation shall not be liable for monetary damages
389 under section 33-856 of the general statutes, as amended by this act,
390 and sections 1 to 12, inclusive, of this act for any failure of the benefit
391 corporation to pursue or create a general public benefit or any specific
392 public benefit.

393 (c) A benefit enforcement proceeding may be commenced or
394 maintained (1) directly by the benefit corporation, or (2) in accordance
395 with the provisions of chapter 601 of the general statutes by (A) a
396 person or group of persons that own beneficially or of record at least
397 five per cent of the total number of shares of all classes and series
398 outstanding on the date the benefit enforcement proceeding is
399 commenced, (B) a person or group of persons that own beneficially or
400 of record ten per cent or more of the outstanding equity interests in an
401 entity of which the benefit corporation is a majority-owned subsidiary,
402 or (C) other persons as specified in the certificate of incorporation of
403 bylaws of the benefit corporation.

404 (d) For purposes of this section, a person is the beneficial owner of
405 shares or equity interests if the shares or equity interests are held in a
406 voting trust or by a nominee on behalf of the beneficial owner.

407 Sec. 12. (NEW) (*Effective October 1, 2013*) (a) A benefit corporation
408 shall produce an annual benefit report.

409 (b) In preparing the annual benefit report, a benefit corporation
410 shall select a third-party standard by which to assess its pursuit of a
411 general public benefit and any specific public benefit. Selecting or
412 changing a third-party standard shall require approval by (1) the
413 greater of (A) a majority of all the directors in office when the action is

414 taken, or (B) the number of directors required by the certificate of
415 incorporation or bylaws of the benefit corporation to take action under
416 this section; or (2) the vote or written consent of the shareholders
417 required by the certificate of incorporation or bylaws of the benefit
418 corporation to take action under this section.

419 (c) The annual benefit report shall include:

420 (1) A narrative description of (A) the ways in which the benefit
421 corporation pursued a general public benefit during the year and the
422 extent to which a general public benefit was created; (B) (i) the ways in
423 which the benefit corporation pursued any specific public benefit that
424 the certificate of incorporation states it is the purpose of the benefit
425 corporation to create, and (ii) the extent to which that specific public
426 benefit was created; (C) any circumstances that have hindered the
427 creation by the benefit corporation of a general public benefit or any
428 specific public benefit; and (D) the process and rationale for selecting
429 or changing the third-party standard used to prepare the benefit
430 report;

431 (2) An assessment of the overall social and environmental
432 performance of the benefit corporation against a third-party standard
433 (A) applied consistently with any application of that standard in prior
434 benefit reports, or (B) accompanied by an explanation of the reasons
435 for any inconsistent application or the change to that standard from
436 the one used in the report immediately prior;

437 (3) The name of the benefit director and the benefit officer, if any,
438 and the address to which correspondence to each of them may be
439 directed;

440 (4) The compensation paid by the benefit corporation during the
441 fiscal year to each director in his or her capacity as a director;

442 (5) The opinion of (A) the benefit director, (B) the board of directors,
443 or (C) the person designated in a shareholder agreement pursuant to

444 subsection (c) of section 8 of this act;

445 (6) A statement of any connection between the organization that
446 established the third-party standard, or its directors, officers or any
447 holder of five per cent or more of the voting power or capital interests
448 in the organization, and the benefit corporation or its directors, officers
449 or any holder of five per cent or more of the outstanding shares of the
450 benefit corporation, including any financial or governance relationship
451 that might materially affect the credibility of the use of the third-party
452 standard; and

453 (7) If a shareholder agreement eliminates the board of directors or
454 transfers to one or more shareholders or other persons all or part of the
455 authority to exercise corporate powers or to manage the business and
456 affair of the corporation, a description of (A) the persons that exercise
457 the powers, duties and rights and who have the immunities of the
458 board of directors, and (B) the name of the person, if any, who is
459 vested with the powers, duties, rights and immunities of a benefit
460 director.

461 (d) If, during the year covered by a benefit report, a benefit director
462 or benefit officer resigned from or refused to stand for reelection to the
463 position of benefit director or benefit officer, or was removed from the
464 position of benefit director or benefit officer, and the benefit director or
465 benefit officer furnished the benefit corporation with a written
466 statement or correspondence concerning the circumstances
467 surrounding the resignation, refusal, or removal, the benefit report
468 shall include that correspondence as an exhibit.

469 (e) The annual benefit report need not be audited or certified by the
470 organization that designed the third-party standard used in the annual
471 benefit report.

472 (f) A benefit corporation shall send its annual benefit report to each
473 shareholder (1) not later than one hundred twenty days following the
474 end of the fiscal year of the benefit corporation, or (2) at the same time

475 that the benefit corporation delivers any other annual report to its
476 shareholders, whichever is earlier.

477 (g) A benefit corporation shall post and maintain each annual
478 benefit report on the public portion of its Internet web site, if any, but
479 the compensation paid to directors and any financial, confidential or
480 proprietary information included in any benefit report may be omitted
481 from the benefit report as posted.

482 (h) If a benefit corporation does not have an Internet web site, the
483 benefit corporation shall provide a copy of its most recent benefit
484 report, without charge, to any person who requests a copy, provided
485 the compensation paid to directors and any financial, confidential or
486 proprietary information included in any benefit report may be omitted
487 from such copy.

488 Sec. 13. Section 33-856 of the general statutes is repealed and the
489 following is substituted in lieu thereof (*Effective October 1, 2013*):

490 (a) A shareholder is entitled to appraisal rights, and to obtain
491 payment of the fair value of that shareholder's shares, in the event of
492 any of the following corporate actions:

493 (1) Consummation of a merger to which the corporation is a party
494 (A) if shareholder approval is required for the merger by section 33-
495 817 and the shareholder is entitled to vote on the merger, except that
496 appraisal rights shall not be available to any shareholder of the
497 corporation with respect to shares of any class or series that remain
498 outstanding after consummation of the merger, or (B) if the
499 corporation is a subsidiary and the merger is governed by section 33-
500 818;

501 (2) Consummation of a share exchange to which the corporation is a
502 party as the corporation whose shares will be acquired, if the
503 shareholder is entitled to vote on the exchange, except that appraisal
504 rights shall not be available to any shareholder of the corporation with

505 respect to any class or series of shares of the corporation that is not
506 exchanged;

507 (3) Consummation of a disposition of assets pursuant to section 33-
508 831 if the shareholder is entitled to vote on the disposition, except that
509 appraisal rights shall not be available to any shareholder of the
510 corporation with respect to shares of any class or series if (A) under the
511 terms of the corporate action approved by the shareholders there is to
512 be distributed to shareholders in cash its net assets, in excess of a
513 reasonable amount reserved to meet claims of the type described in
514 sections 33-886 and 33-887, (i) within one year after the shareholders'
515 approval of the action, and (ii) in accordance with their respective
516 interests determined at the time of such distribution, and (B) the
517 disposition of assets is not an interested transaction;

518 (4) An amendment of the certificate of incorporation with respect to
519 a class or series of shares that reduces the number of shares of a class
520 or series owned by the shareholder to a fraction of a share if the
521 corporation has the obligation or right to repurchase the fractional
522 share so created; [or]

523 (5) If the corporation is not a benefit corporation as defined in
524 section 1 of this act, (A) an amendment of the certificate of
525 incorporation to state that the corporation is a benefit corporation, (B)
526 consummation of a merger to which the corporation is a party in
527 which the surviving entity will be a benefit corporation, or (C)
528 consummation of a share exchange to which the corporation is a party
529 and the shares of the corporation will be exchanged for shares of a
530 benefit corporation; or

531 ~~[(5)]~~ (6) Any other merger, share exchange, disposition of assets or
532 amendment to the certificate of incorporation to the extent provided by
533 the certificate of incorporation, the bylaws or a resolution of the board
534 of directors.

535 (b) Notwithstanding subsection (a) of this section, the availability of

536 appraisal rights under subdivisions (1), (2), (3), [and] (4) and (5) of
537 subsection (a) of this section shall be limited in accordance with the
538 following provisions:

539 (1) Appraisal rights shall not be available for the holders of shares of
540 any class or series of shares which is:

541 (A) A covered security under Section 18(b)(1)(A) or (B) of the
542 Securities Act of 1933, as amended;

543 (B) Traded in an organized market and has at least two thousand
544 shareholders and a market value of at least twenty million dollars,
545 exclusive of the value of such shares held by the corporation's
546 subsidiaries, senior executives, directors and beneficial shareholders
547 owning more than ten per cent of such shares; or

548 (C) Issued by an open-end management investment company
549 registered with the Securities and Exchange Commission under the
550 Investment Company Act of 1940 and may be redeemed at the option
551 of the holder at net asset value.

552 (2) The applicability of subdivision (1) of this subsection shall be
553 determined as of: (A) The record date fixed to determine the
554 shareholders entitled to receive notice of the meeting of shareholders
555 to act upon the corporate action requiring appraisal rights; or (B) the
556 day before the effective date of such corporate action if there is no
557 meeting of shareholders.

558 (3) Subdivision (1) of this subsection shall not be applicable and
559 appraisal rights shall be available pursuant to subsection (a) of this
560 section for the holders of any class or series of shares (A) who are
561 required by the terms of the corporate action requiring appraisal rights
562 to accept for such shares anything other than cash or shares of any
563 class or any series of shares of any corporation, or any other
564 proprietary interest of any other entity, that satisfies the standards set
565 forth in subdivision (1) of this subsection at the time the corporate

566 action becomes effective, or (B) in the case of the consummation of a
567 disposition of assets pursuant to section 33-831, unless such cash,
568 shares or proprietary interests are, under the terms of the corporate
569 action approved by the shareholders, to be distributed to the
570 shareholders, as part of a distribution to shareholders of the net assets
571 of the corporation in excess of a reasonable amount to meet claims of
572 the type described in sections 33-886 and 33-887, (i) not later than one
573 year after the shareholders' approval of the action, and (ii) in
574 accordance with their respective interests determined at the time of the
575 distribution.

576 (4) Subdivision (1) of this subsection shall not be applicable and
577 appraisal rights shall be available pursuant to subsection (a) of this
578 section for the holders of any class or series of shares where the
579 corporate action is an interested transaction.

580 (c) Notwithstanding any other provision of this section, the
581 certificate of incorporation as originally filed or any amendment
582 thereto may limit or eliminate appraisal rights for any class or series of
583 preferred shares, but any such limitation or elimination contained in
584 an amendment to the certificate of incorporation that limits or
585 eliminates appraisal rights for any of such shares that are outstanding
586 immediately prior to the effective date of such amendment or that the
587 corporation is or may be required to issue or sell thereafter pursuant to
588 any conversion, exchange or other right existing immediately before
589 the effective date of such amendment shall not apply to any corporate
590 action that becomes effective within one year of that date if such action
591 would otherwise afford appraisal rights.

592 (d) Where the right to be paid the value of shares is made available
593 to a shareholder by this section, such remedy shall be the exclusive
594 remedy as holder of such shares against the corporate actions
595 described in this section, whether or not the shareholder proceeds as
596 provided in sections 33-855 to 33-872, inclusive.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	New section
Sec. 2	<i>October 1, 2013</i>	New section
Sec. 3	<i>October 1, 2013</i>	New section
Sec. 4	<i>October 1, 2013</i>	New section
Sec. 5	<i>October 1, 2013</i>	New section
Sec. 6	<i>October 1, 2013</i>	New section
Sec. 7	<i>October 1, 2013</i>	New section
Sec. 8	<i>October 1, 2013</i>	New section
Sec. 9	<i>October 1, 2013</i>	New section
Sec. 10	<i>October 1, 2013</i>	New section
Sec. 11	<i>October 1, 2013</i>	New section
Sec. 12	<i>October 1, 2013</i>	New section
Sec. 13	<i>October 1, 2013</i>	33-856

Statement of Purpose:

To implement the Governor's budget recommendations.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]